

# EXHIBIT E

November 20, 2020

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Page 1

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF CALIFORNIA

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4 - - - - - X

5 THERESA SWEET, et al., on :

6 behalf of themselves and all :

7 others similarly situated, :

8 Plaintiffs, :

9 vs. :

10 ELISABETH DEVOS, in her :

11 official capacity as :

12 Secretary of the United :

13 States Department of :

14 Education, et al., :

15 Defendants. :

16 - - - - - X

17  
18 Remote Videotaped Deposition Of DIANE AUER JONES

19 Friday, November 20, 2020

20 9:15 a.m. (EST)

21  
22  
23 Job No. 330599

24 Pages: 1 - 301

25 Reported by: Dana C. Ryan, RPR, CRR

<p style="text-align: right;">Page 18</p> <p>1 witness, was that on behalf of the Center for</p> <p>2 Excellence in Higher Education?</p> <p>3 A Yes.</p> <p>4 MS. O'GRADY: Okay. We're going to</p> <p>5 mark as Exhibit 2 the declaration that you had no</p> <p>6 specific -- that you used to prepare for this</p> <p>7 deposition. And in the folder, that is going to</p> <p>8 be ECF number 56-3, Jones Declaration. It is</p> <p>9 about the eighth file down in the folder.</p> <p>10 THE WITNESS: This is the declaration?</p> <p>11 MS. O'GRADY: Yes, Jones declaration.</p> <p>12 (Jones Deposition Exhibit 2 was marked</p> <p>13 for identification and attached to the</p> <p>14 transcript.)</p> <p>15 BY MS. O'GRADY:</p> <p>16 Q And do you have that open and ready?</p> <p>17 A I do.</p> <p>18 Q So, Ms. Jones, did you write this</p> <p>19 document?</p> <p>20 A Yes.</p> <p>21 Q Did you have anyone assist you in</p> <p>22 writing it?</p> <p>23 A Yes.</p> <p>24 Q And who helped you write it?</p> <p>25 A Office of General Counsel at the</p>	<p style="text-align: right;">Page 20</p> <p>1 are responsible for?</p> <p>2 A I'm responsible for overseeing the</p> <p>3 Office of Postsecondary Education and that</p> <p>4 includes both the regulatory, the policy and</p> <p>5 regulatory division of the Office of Postsecondary</p> <p>6 Ed. That hasn't -- the direct supervisor of the</p> <p>7 assistant secretary ultimately reports up to the</p> <p>8 media office. That also includes our grant</p> <p>9 programs and all our postsecondary ed grant</p> <p>10 programs.</p> <p>11 I also receive the office of what's</p> <p>12 called OCTAE, the Office of Career, Technical and</p> <p>13 Adult Education. And again, they have a number of</p> <p>14 grant programs, and the Perkins loan program --</p> <p>15 I'm sorry, the Perkins Act programs and those</p> <p>16 report up to me.</p> <p>17 And then federal student aid also</p> <p>18 reports to me. In the case of federal student</p> <p>19 aid, it is a performance-based organization, and</p> <p>20 so the relationship between the department and the</p> <p>21 FSA is slightly different than OPE or OCTAE, the</p> <p>22 other two divisions that report up to me.</p> <p>23 With regard to FSA, I am -- I have</p> <p>24 oversight over the policy that is implemented by</p> <p>25 FSA. So policy and operations are divided in</p>
<p style="text-align: right;">Page 19</p> <p>1 Department of Ed.</p> <p>2 Q Anything else?</p> <p>3 A No.</p> <p>4 Q And on the last page, that's your</p> <p>5 signature?</p> <p>6 A Yes, it is.</p> <p>7 Q Okay. And I just want to note for the</p> <p>8 record you signed this under penalty of perjury?</p> <p>9 A Yes.</p> <p>10 Q Now, I'm just -- use your declaration</p> <p>11 as a jumping off point for getting a sense of your</p> <p>12 job history and then eventually your</p> <p>13 responsibilities at the Department of Education.</p> <p>14 So if we can just go to paragraph 2</p> <p>15 which discusses your job title and</p> <p>16 responsibilities.</p> <p>17 A I can see it.</p> <p>18 Q Thank you. Okay. I'm hoping you can</p> <p>19 expound upon this right now and give me a broader</p> <p>20 sense of what you at this point consider your job</p> <p>21 responsibilities to be?</p> <p>22 A So I serve currently as the principal</p> <p>23 deputy under secretary and am delegated the duties</p> <p>24 of under secretary at the Department of Ed.</p> <p>25 Q And what are the main areas that you</p>	<p style="text-align: right;">Page 21</p> <p>1 statute, and the operations of FSA are the domain</p> <p>2 of the chief operating officer, and then policy</p> <p>3 oversight is the domain of both the Office of</p> <p>4 Postsecondary Ed and then my oversight in the</p> <p>5 Office of the Under Secretary.</p> <p>6 Q So who else besides you oversees policy</p> <p>7 at FSA?</p> <p>8 A Do you mean the implementation of</p> <p>9 policy or the development of policy?</p> <p>10 Q I'll ask both. First the development</p> <p>11 of policy?</p> <p>12 A So the development of policy, you know,</p> <p>13 it involves the Office of Postsecondary Education,</p> <p>14 it involves my office, the Office of the Secretary</p> <p>15 and the Office of General Counsel.</p> <p>16 Policy development involves all of</p> <p>17 those offices in the process, and in some cases</p> <p>18 the Office of Management and Budget as well.</p> <p>19 Q And then the implementation of policy,</p> <p>20 was that the second prong?</p> <p>21 A (Witness nods head.)</p> <p>22 Q Okay. And who oversees that?</p> <p>23 A So there -- at FSA, there is a policy</p> <p>24 implementation office. They are involved in the</p> <p>25 actual implementation of the policy at which point</p>

<p style="text-align: right;">Page 22</p> <p>1 my role becomes making sure that the</p> <p>2 implementation of the policy aligns with our</p> <p>3 regulations.</p> <p>4 Q Is anyone else besides you performing</p> <p>5 that role of, I think as you put it, ensuring the</p> <p>6 implementation of the policies within the</p> <p>7 regulations?</p> <p>8 A Yes, the Office of the Secretary, the</p> <p>9 Office of General Counsel and, in some cases, the</p> <p>10 Office of Management and Budget.</p> <p>11 Q And when you say "the Office of the</p> <p>12 Secretary," do you mean the secretary herself, or</p> <p>13 are there other certain individuals that are</p> <p>14 tasked with that?</p> <p>15 A There are a group of people that are</p> <p>16 involved depending upon which policy decision</p> <p>17 you're discussing, so in some cases it would</p> <p>18 involve the secretary's chief of staff, the</p> <p>19 Capitol floor to the secretary, the deputy</p> <p>20 secretary. And in some cases where there's a</p> <p>21 formal decision on loans, for example, the</p> <p>22 secretary, you know, would be the person who would</p> <p>23 sign off.</p> <p>24 So it depends on the issue. It depends</p> <p>25 on the topic. But it could involve her, the</p>	<p style="text-align: right;">Page 24</p> <p>1 So in that case she did sign off. I -- I was part</p> <p>2 of that meeting.</p> <p>3 In other cases, I don't always know who</p> <p>4 the decision maker was. There were conversations,</p> <p>5 but I don't always know who the decision maker</p> <p>6 was.</p> <p>7 Q But regarding the 2019 regulations, the</p> <p>8 secretary herself was a decision maker?</p> <p>9 A Oh, you're talking about our -- our</p> <p>10 rule-making effort in December 2019?</p> <p>11 Q Well, I was just talking about the</p> <p>12 meeting that you just referenced.</p> <p>13 A The meeting I just referenced was with</p> <p>14 regard to the relief methodology --</p> <p>15 Q Okay.</p> <p>16 A -- that was determined in 2019.</p> <p>17 If you're asking me about negotiated</p> <p>18 rule making, that is a fundamentally different</p> <p>19 process in -- in which case, no, the secretary is</p> <p>20 not -- does not, you know, directly sign off on</p> <p>21 that. There's negotiator rule-making process, a</p> <p>22 public comment period, a response. So that is a</p> <p>23 much longer process. That is not just an effort</p> <p>24 of the secretary making a decision.</p> <p>25 Q Okay. And in terms of the relief</p>
<p style="text-align: right;">Page 23</p> <p>1 entire group or some subset of that group.</p> <p>2 Q With regard to borrower defense</p> <p>3 policies, does that include the secretary herself?</p> <p>4 A Again it would depend on the issue</p> <p>5 within the -- under the umbrella of borrower</p> <p>6 defense, there are many, many issues that fall</p> <p>7 under that. Some could include the secretary and</p> <p>8 some might not.</p> <p>9 Q And when has the secretary herself been</p> <p>10 included?</p> <p>11 A Are you asking me about conversations</p> <p>12 or decisions?</p> <p>13 Q I'm asking about decisions. You said</p> <p>14 there are certain instances where she might become</p> <p>15 personally involved, and I'm wondering what those</p> <p>16 instances are if you can give me examples, if not</p> <p>17 an exhaustive list?</p> <p>18 A Right. I can't give you an exhaustive</p> <p>19 list because, you know, I haven't been witness to</p> <p>20 every decision so I'm not always sure who exactly</p> <p>21 made the decision. But I can tell you that with</p> <p>22 regard to the development and approval of the new</p> <p>23 relief methodology that was announced in</p> <p>24 December 2019, I believe, the secretary did sign</p> <p>25 off and authorize the use of a new methodology.</p>	<p style="text-align: right;">Page 25</p> <p>1 methodology decision, was she involved just in</p> <p>2 that one meeting or in decision-making meetings up</p> <p>3 to that meeting?</p> <p>4 MR. MERRITT: Objection: scope.</p> <p>5 BY MS. O'GRADY:</p> <p>6 Q I want to get a sense of whether or not</p> <p>7 there was a single meeting where the secretary</p> <p>8 signed the relief methodology or if there had been</p> <p>9 previous involvement with her personally.</p> <p>10 MR. MERRITT: Well, the relief</p> <p>11 technology is not a topic on which the court</p> <p>12 authorized discovery.</p> <p>13 MS. O'GRADY: Well, I would disagree.</p> <p>14 I believe it's related. But for purposes of just</p> <p>15 getting us started, I'll move on.</p> <p>16 BY MS. O'GRADY:</p> <p>17 Q Okay. Ms. Jones, who do you report to?</p> <p>18 I just want to get a sense of the general</p> <p>19 reporting structure in your current role.</p> <p>20 A I report to the Secretary of Education.</p> <p>21 Q And is there anyone else between you</p> <p>22 and her that you report to?</p> <p>23 A Directly or indirectly?</p> <p>24 Q I suppose -- if there's no one</p> <p>25 directly, I suppose indirectly.</p>

<p style="text-align: right;">Page 102 Page</p> <p>1 A Well, I didn't invent the terminology, 2 but the terminology as I understand it is that 3 adjudication is step one, reviewing the merit. 4 Step two is the determination of relief. And then 5 when that is done, the borrower is notified. 6 Q Okay. So processing is not a term of 7 art, then? It goes adjudication, decision 8 notification? 9 A I think FSA uses the term "processing" 10 to mean the notification of the borrower. 11 Q Okay. Now, with this step-one, 12 step-two division, if a claim in step one is 13 adjudicated as denied, step two is not necessary; 14 is that right? 15 A I -- I don't recall exactly how the 16 10 percent decision is applied to Corinthian, so I 17 can't answer the question there. 18 Q Taking that aside. 19 A Outside of that group, I -- I wouldn't 20 imagine that if they're ineligible you'd have to 21 do a determination, so I would imagine that step 22 two the sep- -- it would be separate. 23 Q So in your role, you've only ever had 24 involvement with grants of borrower defense 25 applications; is that right?</p>	<p style="text-align: right;">Page 104 Page</p> <p>1 November 2019, step-one determinations were being 2 made pending the development of the new partial 3 relief methodology; is that right? 4 A That's what I've been told. I mean, I 5 don't have supervision over that unit, so it 6 was -- I guess you could say I'm speculating here, 7 but that is the information I was provided. 8 Q And, again, by whom? 9 A It would either -- you know, I -- I 10 am -- I'm sure Mark Brown would have given me that 11 information, but I may have also gotten it from 12 Colleen Nevin in a meeting. 13 Q Okay. And the second part of this 14 sentence is, you know, determinations that some 15 borrowers established successful borrower defense 16 in accordance with the applicable standard, and 17 that standard is the standard governing step-one 18 determinations; right? 19 A That is correct. 20 Q Okay. I think -- we've talked a lot 21 about your lack of involvement with that standard? 22 A Right. 23 Q I -- I just want to understand your 24 role. Is there a reason that you have had no 25 involvement in step one?</p>
<p style="text-align: right;">Page 103 Page</p> <p>1 A I'm not involved in granting any 2 borrower defense applications. My role has been 3 around the policy for the regulations and the 4 methodology for determination of relief. 5 Q Okay. So my question is the 6 methodology for determination of relief is solely 7 about the percentage of relief once an application 8 has been granted; it doesn't involve a denied 9 application? 10 A That is correct, you know, with this 11 carve-out for this 10 percent Corinthian. 12 Q Okay. In paragraph 25, I want to just 13 read the first sentence of that paragraph for the 14 record. It's a little bit long. 15 A Sure. 16 As explained in other declarations 17 submitted as part of this administrative record, 18 the department has continued to adjudicate claims 19 since the injunction was issued in Manriquez, 20 consistent with that injunction, including making 21 step-one determinations that some borrowers have 22 established a successful borrower defense in 23 accordance with the applicable standard. 24 Q Okay. So this is -- here you say that 25 claims -- this was written in November. So as of</p>	<p style="text-align: right;">Page 105 Page</p> <p>1 A I -- I think there are two reasons. 2 One is I'm not an attorney. I -- I have no 3 expertise or professional experience or ability to 4 evaluate evidence. I just don't. So I think, you 5 know -- so one of the reasons is that, you know, 6 I'm not an attorney. 7 But the second reason is that the -- 8 the legislation that establishes federal student 9 aid as a performance-based organization makes very 10 clear the division between policy and operations. 11 And with the borrower defense unit residing in 12 FSA, those are operational decisions. The -- the 13 application of a regulation is FSA's decision to 14 make, right. So when there is a policy question 15 about that, I get involved; but outside of the 16 policy questions, you know, they are a 17 semi-autonomous unit, so not only -- 18 Q So what -- 19 A -- (indiscernible) experience, you 20 know, that would be crossing the separation of 21 labor. 22 Q I want to understand, though, how -- 23 how do you determine what is a policy question 24 that would be appropriate for you to weigh in on? 25 A You know, I -- it's hard to give a</p>

<p style="text-align: right;">Page 106 Page</p> <p>1 general rule, right, because policy -- it depends, 2 right. So the answer is it depends. But I think 3 the place that maybe best described this is that 4 policy are questions about regulations versus what 5 the BD unit which is making decisions about an 6 individual borrower's application. 7 Q So in your understanding, there is no 8 policy to govern step-one determinations; there's 9 only an individual attorney-driven adjudication of 10 evidence? 11 And I do not want to put words in your 12 mouth. I want to understand. 13 A No, I mean, I think the -- the policy 14 question on step one, as I, you know, explained 15 earlier, was which state standard, right. So, you 16 know, I think we needed a general policy about how 17 do you figure out which state standard to use. 18 Now, I'm not the one who issued that 19 policy, but, for example, do you use the state 20 where the company is located? Do you use the 21 state where the campus is located? Do you use the 22 state where the borrower is located? 23 Q So your understanding is the only 24 policy question with regard to adjudicating 25 borrower defense applications is which state</p>	<p style="text-align: right;">Page 108 Page</p> <p>1 potential to be the highest paid employee at the 2 department because of the bonus structure, and 3 when Congress created the PBO, which I believe was 4 in 1998, they felt as though FSA as a PBO had to 5 be held accountable for their performance and 6 therefore had to have semi-autonomous operational 7 control. 8 But Congress did not want them to be 9 the policy or the regulatory body, and Congress 10 assigned that role to the department. 11 Q So it's your understanding of that 12 structure -- I hear you saying that that structure 13 determines in part your ability to involve 14 yourself in step-one determinations; is that 15 right? 16 A Well, I mean, I think it's twofold; 17 right? I mean, one that is an operational 18 protocol, so I would not be involved because under 19 the way we are managing FSA, I -- I don't get 20 involved in day-to-day operation decisions. But 21 even if we did, I personally couldn't because I'm 22 not an attorney. 23 Q Okay. So what's the difference, 24 though, between step one and step two? 25 A The difference between step one is it's</p>
<p style="text-align: right;">Page 107 Page</p> <p>1 standard to use? 2 A Outside of the regulatory questions 3 about whether or not breach of contract is 4 considered, right. So we have the high-level 5 policy decisions defining misrepresentation, and 6 obviously I'm involved in creating the 2019 7 regulation which sets forth a definition of 8 misrepresentation. 9 But when it comes to determining for an 10 individual borrower whether misrepresentation 11 occurred, that's not a policy decision beyond the 12 regulatory requirement that the definition of 13 misrepresentation be applied. 14 Q I want to go back to your statement 15 about it being performance based and you being in 16 operations. 17 Can you clarify that for me and just 18 explain what you meant by that for me a little bit 19 more? 20 A Sure. Because FSA is a 21 performance-based organization, they have 22 different hiring authority; they have different 23 contracting authority; and they have a different 24 pay scale. Senior leaders at FSA get bonuses. 25 The COO, the chief operating officer, has the</p>	<p style="text-align: right;">Page 109 Page</p> <p>1 the evaluation of legal evidence to make a legal 2 determination of whether misrepresentation 3 occurred. That is very different than the policy 4 which defines misrepresentation in regulations. 5 Q Right. 6 I suppose I'm getting at so the policy 7 that defines misrepresentation in regulations and 8 the policy that sets a schedule for determining, 9 you know, a percentage of relief borrowers on the 10 whole will be getting, why is your role different 11 with respects to step one and step two? 12 A Well, again in step two, I am not 13 making the determination for any particular 14 borrower about what level of relief they're 15 getting. All I'm trying to do is in the same way 16 that a policy process defined misrepresentation, I 17 was involved in a policy process to define 18 financial harm. And then the BD unit applies that 19 definition. 20 So I think you could look at what I 21 refer to as the methodology as the policy 22 definition of what constitutes financial harm. So 23 the policy is set at a very high level. This is 24 how we define financial harm, but it's the BD unit 25 that applies it to any particular borrower.</p>

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<p style="text-align: right;">Page 110 Page</p> <p>1 Q And why isn't it the case with step one</p> <p>2 that policy would be set on --</p> <p>3 A Policy was set in establishing the</p> <p>4 definition of misrepresentation.</p> <p>5 Q And that's the extent of your</p> <p>6 involvement with that?</p> <p>7 A That is the extent of my involvement is</p> <p>8 in defining misrepresentation in the 2019 regs.</p> <p>9 Granted, I was not involved in defining</p> <p>10 misrepresentation in the 2016 regs or the 1995</p> <p>11 regs, but I was involved in defining</p> <p>12 misrepresentation for the 2019 regs.</p> <p>13 MS. O'GRADY: Okay. If we can go to</p> <p>14 another exhibit. This will be -- if I could just</p> <p>15 ask the court reporter, Dana, did I actually mark</p> <p>16 Exhibit 10 or did I not? I'm hoping that I did</p> <p>17 not, but just let me know either way.</p> <p>18 THE COURT REPORTER: Can you hear me?</p> <p>19 MS. O'GRADY: Now I can.</p> <p>20 THE COURT REPORTER: Okay. Just give</p> <p>21 me just a second. I separated files, so I've got</p> <p>22 to go into the last file.</p> <p>23 MS. O'GRADY: By my count, I'm now up</p> <p>24 to Exhibit 10 because we didn't actually talk</p> <p>25 about the Nevin declaration. But if I'm wrong</p>	<p style="text-align: right;">Page 112 Page</p> <p>1 Q No problem.</p> <p>2 A Yes, this looks like the transcript of</p> <p>3 my hearing before the House Oversight Committee.</p> <p>4 Q Okay. And who prepared you for this</p> <p>5 testimony?</p> <p>6 MR. MERRITT: Objection to the scope.</p> <p>7 BY MS. O'GRADY:</p> <p>8 Q I believe you can still answer.</p> <p>9 MR. MERRITT: Okay. Go ahead for now.</p> <p>10 THE WITNESS: Largely I prepared myself</p> <p>11 for the hearing, but, you know, there were</p> <p>12 meetings with, you know, attorneys in the Office</p> <p>13 of General Counsel. And -- and certainly people</p> <p>14 on my team, you know, helped me pull documents to</p> <p>15 review.</p> <p>16 BY MS. O'GRADY:</p> <p>17 Q Okay. And what kind of documents did</p> <p>18 you review?</p> <p>19 MR. MERRITT: Objection as to calling</p> <p>20 for privileged information as well.</p> <p>21 BY MS. O'GRADY:</p> <p>22 Q I certainly don't want any privileged</p> <p>23 information, but if there were members of your</p> <p>24 team who were not lawyers that you worked with or</p> <p>25 to the extent you prepared yourself by reviewing</p>
<p style="text-align: right;">Page 111 Page</p> <p>1 about that and it's Exhibit 11, that's fine. Just</p> <p>2 please let me know so I don't mess up the</p> <p>3 numbering.</p> <p>4 THE COURT REPORTER: I have 9 as the</p> <p>5 last one you marked.</p> <p>6 MS. O'GRADY: I can tell you which</p> <p>7 document we're going to open. It's a PDF in the</p> <p>8 main folder, Hearing Examining For-Profit College</p> <p>9 Oversight.</p> <p>10 THE COURT REPORTER: I'm sorry, Maggie.</p> <p>11 Nine is the last one you marked. Ten is next.</p> <p>12 Could you hear me then?</p> <p>13 MS. O'GRADY: No. If you could just</p> <p>14 tell me if the next exhibit is 10 or 11?</p> <p>15 I see it in the chat. Thank you.</p> <p>16 So this exhibit will be Exhibit 10 for</p> <p>17 this deposition.</p> <p>18 (Jones Deposition Exhibit 10 was marked</p> <p>19 for identification and attached to the</p> <p>20 transcript.)</p> <p>21 BY MS. O'GRADY:</p> <p>22 Q And, Ms. Jones, do you recognize this</p> <p>23 document?</p> <p>24 A Sorry. I had to get my cursor over to</p> <p>25 my microphone.</p>	<p style="text-align: right;">Page 113 Page</p> <p>1 previous memoranda, I'd like to know what those</p> <p>2 were.</p> <p>3 A Well, this is a totally different</p> <p>4 matter. This has nothing to do with borrower</p> <p>5 defense.</p> <p>6 Q Well, I believe -- I believe some does.</p> <p>7 We can go to that. But did -- I take from your</p> <p>8 answer you mean you did not review any documents</p> <p>9 about borrower defense in preparation for this</p> <p>10 testimony?</p> <p>11 MR. MERRITT: Again, objection. It's</p> <p>12 calling for privileged company.</p> <p>13 MS. O'GRADY: That's fine. I'll move</p> <p>14 on.</p> <p>15 BY MS. O'GRADY:</p> <p>16 Q I want to talk about your exchange with</p> <p>17 Congresswoman Pressley, and this is about borrower</p> <p>18 defense. I think the easiest page numbering is</p> <p>19 from the top of the page, and it's 49.</p> <p>20 A Yes, I remember this part of the</p> <p>21 dialogue well.</p> <p>22 Q So at the bottom, Congresswoman</p> <p>23 Pressley asked, Ms. Jones, at this moment, do you</p> <p>24 know how many claims remain unprocessed?</p> <p>25 And here she is talking about borrower</p>



<p style="text-align: right;">Page 114 Page</p> <p>1 defense claims; correct?</p> <p>2 A Yes, so she's asking me about the</p> <p>3 number of claims.</p> <p>4 Q If you want to just read your answer</p> <p>5 for the record.</p> <p>6 A (Witness reviews document.) Okay.</p> <p>7 Q So beginning there, It is a number that</p> <p>8 changes from time to time.</p> <p>9 A Oh, you want me to read it out loud?</p> <p>10 Q Yes, if you don't mind.</p> <p>11 A Okay. Let me scroll back up.</p> <p>12 It is a number that changes from time</p> <p>13 to time. It is probably in the neighborhood of</p> <p>14 160,000. The last official count I got was</p> <p>15 158,000, so I'm assuming it's somewhere in the</p> <p>16 name of 160,000 by now.</p> <p>17 Q Okay. And then on the next page, she</p> <p>18 says -- this is at the top of the page 50 --</p> <p>19 Ms. Jones, for the record, yes or no, is there</p> <p>20 currently a policy which restricts the office of</p> <p>21 Federal Student Aid from adjudicating or</p> <p>22 processing any borrower defense claims that did</p> <p>23 not stem from school closure?</p> <p>24 And there's a little bit of</p> <p>25 interruption there. And the bulk of your answer</p>	<p style="text-align: right;">Page 116 Page</p> <p>1 Q Okay.</p> <p>2 A So it was my understanding that they</p> <p>3 were continuing to look at evidence, but I don't</p> <p>4 have direct knowledge.</p> <p>5 Q And of the pending claims that you've</p> <p>6 stated were in the neighborhood of 160,000, what</p> <p>7 schools do those 160,000 borrowers attend?</p> <p>8 MR. MERRITT: Objection. It's</p> <p>9 overbroad.</p> <p>10 BY MS. O'GRADY:</p> <p>11 Q Are they all CCI?</p> <p>12 A I -- I would have to go back and look,</p> <p>13 but I -- no. I don't know what percentage of them</p> <p>14 were CCI, but, no, by this point in time, there</p> <p>15 were claims from -- from, you know, a list of</p> <p>16 institutions.</p> <p>17 Q Okay. So I -- I guess I'm still trying</p> <p>18 to understand why the injunction in the Calvillo</p> <p>19 Manriquez matter would have prevented step-one and</p> <p>20 step-two determinations from those who did not</p> <p>21 attend CCI schools?</p> <p>22 A I don't think I've ever suggested that</p> <p>23 step one stop. I don't know. I'm not involved in</p> <p>24 step one. I was told it continued, but I don't</p> <p>25 have direct knowledge. So I can't tell you for</p>
<p style="text-align: right;">Page 115 Page</p> <p>1 is then where you begin, There is not a policy</p> <p>2 that prevents.</p> <p>3 Would you just read that part of your</p> <p>4 answer out loud for the record?</p> <p>5 A Sure.</p> <p>6 There is not a policy that prevents the</p> <p>7 review of claims. However, we are not able to</p> <p>8 determine the level of harm or the level of relief</p> <p>9 that a borrower should get because the methodology</p> <p>10 we use is now being challenged by the California</p> <p>11 courts, so we continue to process.</p> <p>12 Q Okay. So I want to understand what you</p> <p>13 mean here by there's not a policy that prevents</p> <p>14 their view of claims.</p> <p>15 A Yes. There was no policy in place to</p> <p>16 prevent Colleen Nevin's team from continuing to</p> <p>17 review evidence, to review claims, to evaluate the</p> <p>18 merit of an application.</p> <p>19 Q And I think you said earlier today that</p> <p>20 you do not know either way if she and her team</p> <p>21 were doing that?</p> <p>22 A Right. I mean, I -- you know, I was</p> <p>23 told on a level that we're continuing to review,</p> <p>24 but I don't have direct knowledge of that. I</p> <p>25 don't supervise her.</p>	<p style="text-align: right;">Page 117 Page</p> <p>1 certain whether it did or it didn't, but there was</p> <p>2 certainly no policy to stop step one.</p> <p>3 Q Okay. Assuming step one had continued,</p> <p>4 what was preventing the department from doing step</p> <p>5 two for non-CCI students?</p> <p>6 A A lack of a methodology to do step two.</p> <p>7 Q And what is the reason for the lack of</p> <p>8 a methodology at this point?</p> <p>9 A Because the Northern District of</p> <p>10 California had determined that our methodology</p> <p>11 potentially involved a Privacy Act violation.</p> <p>12 Q So at the point of the injunction of</p> <p>13 Calvillo Manriquez, was it Ed's intention to use</p> <p>14 that partial relief methodology for all pending</p> <p>15 borrower defense claims step-two determinations?</p> <p>16 A I don't know what the intent was of the</p> <p>17 2017 methodology at the time.</p> <p>18 Q Here, you testified that there could be</p> <p>19 no step-two determinations because of the</p> <p>20 injunction, and --</p> <p>21 A Correct.</p> <p>22 Q -- those 160,000 borrowers are not only</p> <p>23 CCI graduates. So in effect, that methodology</p> <p>24 being enjoined prevented all step-two</p> <p>25 determinations; is that right?</p>



<p style="text-align: right;">Page 130 Page</p> <p>1 A Generally it was an email. There may</p> <p>2 have at times been an attachment with a table, but</p> <p>3 I think generally it was an email, and -- and then</p> <p>4 ultimately I believe that the data warehouse at</p> <p>5 FSA added this as a public feature. I believe</p> <p>6 these data were then posted for public knowledge</p> <p>7 on the data warehouse.</p> <p>8 Q Okay. And when were these updates --</p> <p>9 when did they start getting sent?</p> <p>10 A I don't remember the exact date, but</p> <p>11 I -- I recall that it was after the December 2019</p> <p>12 implementation of the new methodology. So there</p> <p>13 may have been, you know, earlier updates from time</p> <p>14 to time on total numbers, but the regular updates</p> <p>15 were after the methodology had been approved and</p> <p>16 implemented.</p> <p>17 Q And how were the metrics used?</p> <p>18 A What do you mean by "how were the</p> <p>19 metrics used"?</p> <p>20 Q The information was reviewed by the</p> <p>21 secretary. What is your understanding of its</p> <p>22 purpose? Was the -- I'll ask that question. If</p> <p>23 you need clarification, I can add.</p> <p>24 A I mean, I think the purpose was</p> <p>25 twofold. You know, general information.</p>	<p style="text-align: right;">Page 132 Page</p> <p>1 A I believe at that time the updates were</p> <p>2 about total number of claims. What I don't recall</p> <p>3 is whether or not those updates included numbers</p> <p>4 on adjudications. I just can't remember whether</p> <p>5 they were included at that time. I just -- I -- I</p> <p>6 can't remember.</p> <p>7 Q So you don't remember if updates had</p> <p>8 included whether or not any claims -- any</p> <p>9 decisions on the merits had been communicated to</p> <p>10 students?</p> <p>11 A I -- I -- you know, I just can't</p> <p>12 remember the specific, you know, updates that came</p> <p>13 through. You know, I just can't remember.</p> <p>14 Q But at that point before the 2019</p> <p>15 regulations were in effect and these updates</p> <p>16 began, had you talked to anyone about the delay?</p> <p>17 A What do you mean by "talked to anyone</p> <p>18 about the delay"?</p> <p>19 Q You know, were there any meetings or</p> <p>20 conversations you had about the fact that</p> <p>21 decisions were not being sent out?</p> <p>22 A Well, when I came into my role, you</p> <p>23 know, the -- the decision had been made that</p> <p>24 because the Northern District of California had</p> <p>25 concerns about the Privacy Act that we could not</p>
<p style="text-align: right;">Page 131 Page</p> <p>1 Obviously, a policy decision had been made and</p> <p>2 people wanted to know if the process was moving.</p> <p>3 I believe that there -- there was a</p> <p>4 significant amount of hiring as well, and I think</p> <p>5 part of that was to, you know, evaluate, you know,</p> <p>6 the size of the team, you know, do you need more</p> <p>7 people; do you need fewer people.</p> <p>8 I'm not involved in personnel</p> <p>9 decisions, but, you know, I think part of that was</p> <p>10 also, you know, viewed by people to see if the</p> <p>11 team was large enough. I mean, the team expanded</p> <p>12 significantly during this time period.</p> <p>13 Q So you said at the start of that answer</p> <p>14 that people wanted to know the process was moving.</p> <p>15 What do you mean by that?</p> <p>16 A At a general level, you know, it's one</p> <p>17 thing to develop a policy, and it's another to</p> <p>18 make sure that those implementing it can do so.</p> <p>19 And, so, I think there was interest in</p> <p>20 making sure that it was a policy that -- you know,</p> <p>21 that operationally could be implemented.</p> <p>22 Q Prior to the -- prior to this time,</p> <p>23 around December 2019, when these -- when the</p> <p>24 partial relief methodology went into effect, had</p> <p>25 there been updates about progress or lack thereof?</p>	<p style="text-align: right;">Page 133 Page</p> <p>1 apply that methodology; that we had to wait and</p> <p>2 find out whether or not it was going to be deemed</p> <p>3 that the use of Social Security Administration</p> <p>4 data was a violation of the Privacy Act.</p> <p>5 Q While you were waiting, were -- was</p> <p>6 another method being developed?</p> <p>7 A I started developing the team -- you</p> <p>8 know, I pulled together the team and we started</p> <p>9 working on that methodology in, you know, I think,</p> <p>10 that April, May, June time frame of 2019.</p> <p>11 Q I want to go back to the memos that</p> <p>12 updated the secretary on the progress. Do you</p> <p>13 know if those metrics were ever used to determine</p> <p>14 anyone's bonus?</p> <p>15 A I'm not involved in the determination</p> <p>16 of anyone's bonus, so I don't know.</p> <p>17 Q Do you know if those metrics were used</p> <p>18 to determine anyone's job performance rating or</p> <p>19 job performance review?</p> <p>20 MR. MERRITT: Objection to the scope of</p> <p>21 these questions.</p> <p>22 BY MS. O'GRADY:</p> <p>23 Q Ms. Jones, I think you can still</p> <p>24 answer.</p> <p>25 MR. MERRITT: Go ahead.</p>

<p style="text-align: right;">Page 138 Page</p> <p>1 into your position, did you understand it to be</p> <p>2 important to clear that backlog? Not about what</p> <p>3 caused it, but did you understand that it was</p> <p>4 important to clear the backlog of claims?</p> <p>5 A Absolutely I understood it was</p> <p>6 important to clear out the backlog of claims, but</p> <p>7 we had been halted in our path by the judge of the</p> <p>8 Northern District of California.</p> <p>9 Q So throughout the time before the --</p> <p>10 before the methodology went into effect in</p> <p>11 December 2019 and the claim decisions restarted,</p> <p>12 was the backlog an ongoing concern of yours?</p> <p>13 MR. MERRITT: Again, objection. That's</p> <p>14 calling for mental impressions and deliberative</p> <p>15 privileged information.</p> <p>16 MS. O'GRADY: I'll rephrase.</p> <p>17 BY MS. O'GRADY:</p> <p>18 Q Ms. Jones, what steps did you take to</p> <p>19 clear the backlog prior to the 2019 methodology</p> <p>20 going into effect in December of 2019?</p> <p>21 A The instructions that the borrower</p> <p>22 defense unit was operating under was that the</p> <p>23 Northern District of California had determined</p> <p>24 that we -- that the methodology was potentially a</p> <p>25 violation of the Privacy Act. Quite frankly, you</p>	<p style="text-align: right;">Page 140 Page</p> <p>1 California enjoined the methodology.</p> <p>2 So you're asking me to speculate what</p> <p>3 could of, should of. At the end of the day, we</p> <p>4 hadn't completed adjudicating Corinthian claims</p> <p>5 when the judge enjoined the methodology.</p> <p>6 Q So when the injunction came down, it</p> <p>7 was -- you know, you essentially said pencils</p> <p>8 down; we'll just wait for a decision?</p> <p>9 A I didn't say pencils down.</p> <p>10 Q Your understanding was that meant</p> <p>11 because that was prior to your role, but your</p> <p>12 understanding was that since the injunction, it</p> <p>13 was pencils down on --</p> <p>14 A My understanding --</p> <p>15 Q -- on that methodology?</p> <p>16 A My understanding was that because the</p> <p>17 judge had ruled that this was potentially a</p> <p>18 violation of the Privacy Act, I -- you know, I</p> <p>19 don't think the department is in the practice of</p> <p>20 knowingly violating a law.</p> <p>21 So when this was in question, I -- I</p> <p>22 think that everybody was waiting for the judge to</p> <p>23 determine whether or not it was a violation of the</p> <p>24 Privacy Act.</p> <p>25 Q So when the new methodology was</p>
<p style="text-align: right;">Page 139 Page</p> <p>1 know, the question that I asked is have we heard</p> <p>2 from the Northern District of California. I mean,</p> <p>3 the Northern District of California was the</p> <p>4 decision maker on this. And, yes, I would have</p> <p>5 loved for them to have issued a decision promptly.</p> <p>6 Q Are you aware that -- that the</p> <p>7 Department of Education argued in the Ninth</p> <p>8 Circuit that the methodology was only intended for</p> <p>9 Corinthian students and not for those who had</p> <p>10 attended schools other than Corinthian?</p> <p>11 A I'm not aware of the testimony one way</p> <p>12 or the other in that case.</p> <p>13 Q So you'd be surprised to know that it</p> <p>14 was Ed's position in that case that the</p> <p>15 methodology was only ever intended for Corinthian</p> <p>16 students?</p> <p>17 A I -- the -- I would not be surprised to</p> <p>18 know that the methodology was developed for</p> <p>19 Corinthian students. Those were the students that</p> <p>20 were at the center of that case. The question of</p> <p>21 whether or not that methodology would be applied</p> <p>22 to additional borrowers was a question that we</p> <p>23 didn't get to. I never got an answer to that</p> <p>24 question because before we finished adjudicating</p> <p>25 the Corinthian borrowers, the Northern District of</p>	<p style="text-align: right;">Page 141 Page</p> <p>1 developed, was that developed with the express</p> <p>2 purpose of applying to all schools, not just</p> <p>3 Corinthian?</p> <p>4 A I -- I can't speak to what will</p> <p>5 ultimately be determined about the borrowers, you</p> <p>6 know, in -- in involve -- I can't predict what the</p> <p>7 district -- the district court in the --</p> <p>8 Q I'm not asking you about that. What I</p> <p>9 want to know is -- so now we have a new</p> <p>10 methodology --</p> <p>11 A Yes.</p> <p>12 Q -- not enjoined by the court.</p> <p>13 Is that new methodology for -- will</p> <p>14 that be applied to every single step-one</p> <p>15 determination? So a step-one determination is</p> <p>16 made. The borrower defense claim is granted. It</p> <p>17 goes to step two. And this new methodology is for</p> <p>18 every single student?</p> <p>19 A The new methodology is for every</p> <p>20 applicant; however, in the case that an applicant</p> <p>21 has already been awarded more, certainly you're</p> <p>22 not going to go back and apply the new methodology</p> <p>23 and tell them that they owe us money back, right.</p> <p>24 I mean, that -- that -- you know, we're not going</p> <p>25 to go back in time. But, yes, moving forward, the</p>

<p style="text-align: right;">Page 154 Page</p> <p>1 loud for the record?</p> <p>2 A We acknowledge that there is a risk</p> <p>3 that unsubstantiated claims could be filed in</p> <p>4 large numbers to target institutions for the</p> <p>5 purpose of damaging their reputations before the</p> <p>6 department can adjudicate the claims as</p> <p>7 unsubstantiated. Indeed, we are aware of firms</p> <p>8 and advocacy groups that are engaging in such</p> <p>9 coordinated efforts against certain institutions.</p> <p>10 Q So what are you referring to or what is</p> <p>11 this referring to here?</p> <p>12 MR. MERRITT: Objection to the scope.</p> <p>13 We're not here to litigate the 2019 regulation.</p> <p>14 MS. O'GRADY: No, but I think it goes</p> <p>15 to -- the 2019 regulations are based on -- based</p> <p>16 on policy views informed by what has happened and</p> <p>17 what is understood to have happened prior.</p> <p>18 So this is a -- I'm asking the witness</p> <p>19 about what this means. This is the basis for</p> <p>20 developing new regulations. So I'll ask my</p> <p>21 question. I think will be very much within the</p> <p>22 scope.</p> <p>23 BY MS. O'GRADY:</p> <p>24 Q What is the basis for the belief that</p> <p>25 there's a risk of unsubstantiated claims filed in</p>	<p style="text-align: right;">Page 156 Page</p> <p>1 A I don't know what you mean by "the</p> <p>2 past." Could you -- what's your time frame?</p> <p>3 Q During your tenure at the Department of</p> <p>4 Ed.</p> <p>5 MR. MERRITT: I'm going to object to</p> <p>6 this line of questioning as not within the court's</p> <p>7 order.</p> <p>8 MS. O'GRADY: I think it is within the</p> <p>9 court's order based on the reason for the delay.</p> <p>10 MR. MERRITT: Again, at that level of</p> <p>11 generality, that's not --</p> <p>12 MS. O'GRADY: I'm not being very</p> <p>13 general. I'm pointing to a sentence in the 2019</p> <p>14 regs that these regulations are made based on a</p> <p>15 belief of a risk of unsubstantiated claims filed</p> <p>16 in large numbers. If that is a belief of the</p> <p>17 department as a whole, I think that's quite</p> <p>18 germane to whether or not the delay was caused by</p> <p>19 the difficulty of reviewing borrower defense</p> <p>20 applications.</p> <p>21 MR. MERRITT: I don't see how that's</p> <p>22 germane. I mean, it's going to -- as Diane said,</p> <p>23 the regulation was promulgated for a number of</p> <p>24 reasons, and your -- and this was included in the</p> <p>25 regulation, but it's not -- it doesn't apply to</p>
<p style="text-align: right;">Page 155 Page</p> <p>1 large numbers?</p> <p>2 A You know, I -- again, I want to -- I</p> <p>3 want to reiterate, you know, this reg is hundreds</p> <p>4 of pages long, and there are lots of public</p> <p>5 comments. And, so, the answer or the response to</p> <p>6 one single comment is not the basis for a</p> <p>7 regulatory decision. It's hundreds of pages long</p> <p>8 because there are lots and --</p> <p>9 Q Okay.</p> <p>10 A -- lots of comments and considerations.</p> <p>11 So I think you're trying to ask me</p> <p>12 to --</p> <p>13 Q I can simplify the question.</p> <p>14 Do you believe that there is a risk of</p> <p>15 unsubstantiated claims that can be filed in large</p> <p>16 numbers?</p> <p>17 A There is always the risk that somebody</p> <p>18 would submit an application that would not qualify</p> <p>19 for borrower defense relief.</p> <p>20 Q Okay. One person or large numbers of</p> <p>21 people?</p> <p>22 A I think there could be large numbers of</p> <p>23 people.</p> <p>24 Q Do you think there have been large</p> <p>25 numbers in the past?</p>	<p style="text-align: right;">Page 157 Page</p> <p>1 pending claims, as she said.</p> <p>2 MS. O'GRADY: I want to understand the</p> <p>3 reason for department policy and whether or not a</p> <p>4 belief in a risk of unsubstantiated claims that</p> <p>5 can be filed in large numbers is a basis for that</p> <p>6 policy as written in the regulation. It's a --</p> <p>7 MR. MERRITT: Are you asking her if</p> <p>8 it's a reason for the delay in this case or -- or</p> <p>9 whether it justified the 2019 regulation which is</p> <p>10 not at issue in this case?</p> <p>11 MS. O'GRADY: Well, I can -- I can ask</p> <p>12 the question about delay, but what I would like to</p> <p>13 know is if the witness, who's in charge of policy,</p> <p>14 agrees with this statement about the risk of</p> <p>15 unsubstantiated claims.</p> <p>16 MR. MERRITT: You can answer that</p> <p>17 question.</p> <p>18 THE WITNESS: Okay. First of all, I'm</p> <p>19 not in charge of policy. I have oversight</p> <p>20 responsibility over the policy-making process. I</p> <p>21 do not solely own it. It --</p> <p>22 BY MS. O'GRADY:</p> <p>23 Q I didn't mean -- I didn't mean to</p> <p>24 misstate your responsibilities there, but if you</p> <p>25 could answer the question, do you -- do you agree</p>

<p style="text-align: right;">Page 186 Page</p> <p>1 MS. O'GRADY: And file name</p> <p>2 A09-Borrower Defense to Repayment FSA PowerPoint</p> <p>3 to the Secretary is marked as Exhibit 12.</p> <p>4 (Jones Deposition Exhibit 12 was marked</p> <p>5 for identification and attached to the</p> <p>6 transcript.)</p> <p>7 BY MS. O'GRADY:</p> <p>8 Q Okay. And now we are going to go back</p> <p>9 to Exhibit 2, your declaration. And this time</p> <p>10 we're going to look at paragraph 26.</p> <p>11 A Okay. I found it. Twenty-six?</p> <p>12 Q Yes.</p> <p>13 So the bottom of this page, middle of</p> <p>14 the paragraph, it states, The department has been</p> <p>15 working to develop documents to provide a more</p> <p>16 robust explanation for borrowers whose claims are</p> <p>17 denied.</p> <p>18 A Yeah. I must be in the wrong place.</p> <p>19 Where are you again?</p> <p>20 Q I am at the bottom of page 10, the end</p> <p>21 of paragraph 26 that begins on that page.</p> <p>22 A Ah, okay. I'm there now.</p> <p>23 Q Okay. So -- so here you write, The</p> <p>24 department has been working to develop documents</p> <p>25 to provide a more robust explanation for borrowers</p>	<p style="text-align: right;">Page 188 Page</p> <p>1 A Yes.</p> <p>2 Q Okay. So the document -- the document</p> <p>3 here is referring to a template denial notice?</p> <p>4 A Yes.</p> <p>5 Q And then on the next page -- well, it's</p> <p>6 the continuing page of paragraph 26, which is</p> <p>7 page 11. So at the top it begins, Once these</p> <p>8 documents are developed, the department needs to</p> <p>9 work with each of its servicers to put the process</p> <p>10 of loan relief and borrower notification in</p> <p>11 process, which requires contract updates with each</p> <p>12 of the federal student aid loan servicers that</p> <p>13 service direct loans.</p> <p>14 So that's what you were referring to</p> <p>15 just now, the contractors doing the merge?</p> <p>16 A Right. So every time we ask a servicer</p> <p>17 to do anything, notify a borrower, create a new</p> <p>18 letter, anything, it's a change order and an</p> <p>19 additional fee that has to be negotiated.</p> <p>20 Q So that includes sending a denial</p> <p>21 letter?</p> <p>22 A It is my understanding that the</p> <p>23 servicers issued -- issued all the letters, but</p> <p>24 you'd have to check with Colleen Nevin. She would</p> <p>25 know better than I.</p>
<p style="text-align: right;">Page 187 Page</p> <p>1 whose claims are denied.</p> <p>2 And what documents is that sentence</p> <p>3 referring to?</p> <p>4 A (Witness reviews document.)</p> <p>5 I believe this is referring to the</p> <p>6 letter that the servicer would send to the</p> <p>7 borrower following a decision.</p> <p>8 Q And the servicer meaning what?</p> <p>9 A So federal student aid does much of its</p> <p>10 operational business through contract servicers,</p> <p>11 and so the servicers would be the entities that</p> <p>12 would actually send the letter to the borrower.</p> <p>13 Q Does FSA draft the letter?</p> <p>14 A FSA creates the template and the</p> <p>15 information to fill the servicer. It is my</p> <p>16 understanding that the servicer or some other</p> <p>17 contractor does the merge file. That's my</p> <p>18 understanding. I haven't -- I -- I don't work in</p> <p>19 the systems.</p> <p>20 Q Right.</p> <p>21 A My understanding is that a servicer or</p> <p>22 a contractor does the merge.</p> <p>23 Q And by doing the merge, you mean puts</p> <p>24 the information about a certain borrower into the</p> <p>25 template provided by FSA?</p>	<p style="text-align: right;">Page 189 Page</p> <p>1 Q When you say "servicer," you mean --</p> <p>2 what is a servicer? That's different from a loan</p> <p>3 servicer?</p> <p>4 A It is a loan servicer.</p> <p>5 Q So you're referring to loan servicers,</p> <p>6 okay.</p> <p>7 A And -- and -- and, you know -- yes.</p> <p>8 Simply stated yes, we're talking about loan</p> <p>9 servicers here.</p> <p>10 Q So the next sentence, it says, It takes</p> <p>11 longer to develop decision letters that provide an</p> <p>12 explanation for each borrower of why their claim</p> <p>13 was denied, but we believe this investment of time</p> <p>14 is important so that borrowers understand the</p> <p>15 basis for the decision, which is vital to</p> <p>16 instilling confidence in the process.</p> <p>17 So in this paragraph, you've said the</p> <p>18 departments are working to develop these</p> <p>19 documents -- these denial letters.</p> <p>20 Is that process complete? Has the</p> <p>21 department done so?</p> <p>22 A The department has developed denial</p> <p>23 letters that cover the -- that cover the -- the</p> <p>24 kinds of situations we have seen so far, but it is</p> <p>25 always possible that some new category arises and</p>

<p style="text-align: right;">Page 190 Page</p> <p>1 a new letter has to be developed.</p> <p>2 So I can't say that this is the full</p> <p>3 and complete final census, but the attempt was to</p> <p>4 develop letters that -- that could be used to</p> <p>5 communicate regardless of the school the borrower</p> <p>6 attended.</p> <p>7 Q Okay. And then the next sentence is,</p> <p>8 This has taken longer than we hoped but the</p> <p>9 notices are finished and we are now working with</p> <p>10 our contracting officials and loan services to</p> <p>11 enter these notices into servicer systems.</p> <p>12 So this has taken longer than we hoped.</p> <p>13 How long did you hope it would take to develop</p> <p>14 these letters?</p> <p>15 A Our -- I can't remember what -- I can't</p> <p>16 remember what I hoped. I -- I just know that, you</p> <p>17 know, it -- it took what felt like a long time.</p> <p>18 Q And what are the factors that made it</p> <p>19 take what felt like a long time?</p> <p>20 A The complexity -- the complexity of the</p> <p>21 situation.</p> <p>22 Q And what do you mean by that?</p> <p>23 A For example, there are some borrowers</p> <p>24 who have loans that will be adjudicated under all</p> <p>25 three regulations. How do you -- you know, we</p>	<p style="text-align: right;">Page 192 Page</p> <p>1 The complexity was do we try in one</p> <p>2 letter to explain well, these loans were</p> <p>3 adjudicated under California state law, blah,</p> <p>4 blah, blah, but these loans were adjudicated under</p> <p>5 a federal standard. And the question was is it</p> <p>6 better to try and do that all in one letter?</p> <p>7 Should we send two letters, one for each set of</p> <p>8 adjudications?</p> <p>9 So it becomes complicated in deciding</p> <p>10 what -- what content.</p> <p>11 In addition, because for Corinthian</p> <p>12 borrowers a decision had been made that all of</p> <p>13 those borrowers would get a minimum of 10 percent</p> <p>14 relief if they were part of the class, we had to</p> <p>15 have letters that explained the 10 percent to</p> <p>16 Corinthian borrowers, but that 10 percent had not</p> <p>17 been -- it was not part of a policy for other</p> <p>18 schools. It just hadn't -- hadn't, you know,</p> <p>19 gotten there yet.</p> <p>20 Q So the denial letters that identify or</p> <p>21 that are dealing with loans that you say are under</p> <p>22 different regulations, has that letter been</p> <p>23 developed?</p> <p>24 A I believe that the letter has been</p> <p>25 developed for under the state standard. And let</p>
<p style="text-align: right;">Page 191 Page</p> <p>1 were trying to figure out what's the right way to</p> <p>2 manage. Do we send one letter for all three</p> <p>3 adjudications? Do we separate them into three</p> <p>4 separate adjudications?</p> <p>5 So it -- it gets complicated. There's</p> <p>6 a -- you know, when borrowers consolidate loans,</p> <p>7 they don't always understand that they've reset,</p> <p>8 you know, the clock, right. So there are -- is</p> <p>9 it -- the student loan program is a very</p> <p>10 complicated program, and there's just a lot of</p> <p>11 complexity around the potential combinations.</p> <p>12 Q Okay.</p> <p>13 A We have borrowers who, you know, left</p> <p>14 the program and came back or maybe, you know,</p> <p>15 completed one degree and now they're back for a</p> <p>16 second.</p> <p>17 So it's just a complicated --</p> <p>18 Q With respect to the letters that were</p> <p>19 being developed, how do the letters reflect those</p> <p>20 complications?</p> <p>21 A We had to decide, for example, whether</p> <p>22 the letter should have a fill in the blank. So</p> <p>23 let's say a borrower had loans adjudicated under</p> <p>24 the '95 regs and the 2016 regs, meaning under the</p> <p>25 state standard and under the federal standard.</p>	<p style="text-align: right;">Page 193 Page</p> <p>1 me think about if it's been developed for</p> <p>2 the regs -- and -- under the federal standard.</p> <p>3 You know, the longer I recall seeing</p> <p>4 was to respond under the state standard, which is</p> <p>5 more complicated than the federal standard, I</p> <p>6 don't recall whether I've seen a federal standard</p> <p>7 letter yet.</p> <p>8 Q Okay. So and when you say a letter</p> <p>9 under the state standard, you're referring to a</p> <p>10 letter under the '95 regulations?</p> <p>11 A Correct.</p> <p>12 Q Okay. And that's -- okay.</p> <p>13 So besides -- and I think my question a</p> <p>14 couple of questions ago was, you know, what are</p> <p>15 some of the factors that made the process of</p> <p>16 developing this letter -- this denial template</p> <p>17 take longer than you had hoped, and you said one</p> <p>18 of them was having to do with a letter under the</p> <p>19 state standard and the federal standard.</p> <p>20 Is that right?</p> <p>21 A More than one. That was one example.</p> <p>22 Q Yeah. So my next question is what are</p> <p>23 some other factors besides that one?</p> <p>24 A Some other factors are -- and this gets</p> <p>25 very weedy, but the name of the school that the</p>

<p style="text-align: right;">Page 194 Page</p> <p>1 borrower attended may not be the name of the</p> <p>2 school officially in our records.</p> <p>3 Q And what bearing would that have on the</p> <p>4 letter itself?</p> <p>5 A So the borrower may have submitted a</p> <p>6 letter saying, you know, I went to school A, and</p> <p>7 we had to figure out how to send a letter back</p> <p>8 using school A because that school is actually</p> <p>9 listed in our records as school B, but the</p> <p>10 borrower might not have known that.</p> <p>11 So how do you communicate to a</p> <p>12 borrower -- so we either had to, you know,</p> <p>13 communicate to the borrower why this looks to be a</p> <p>14 different name, or they had to have a system</p> <p>15 adjustment.</p> <p>16 Q Is that a -- is that a new problem,</p> <p>17 though? I mean, this is -- I guess I'm asking</p> <p>18 about the development of these letters that are</p> <p>19 providing, as you say in paragraph 26, a more</p> <p>20 robust explanation.</p> <p>21 So is the -- making sure the school</p> <p>22 names match something that is a challenge to</p> <p>23 develop a letter that provides a more robust</p> <p>24 explanation?</p> <p>25 A I would say that that is the case, but</p>	<p style="text-align: right;">Page 196 Page</p> <p>1 MS. O'GRADY: Okay. So the next</p> <p>2 exhibit is in the folder as ECF number 116,</p> <p>3 Defendants Post-CMC Filing.</p> <p>4 THE WITNESS: Can you give me the</p> <p>5 number? ECF?</p> <p>6 BY MS. O'GRADY:</p> <p>7 Q Sure. ECF number 116.</p> <p>8 A Ah, okay.</p> <p>9 MS. O'GRADY: Okay. And this exhibit</p> <p>10 will be marked as Exhibit 13.</p> <p>11 (Jones Deposition Exhibit 13 was marked</p> <p>12 for identification and attached to the</p> <p>13 transcript.)</p> <p>14 BY MS. O'GRADY:</p> <p>15 Q Ms. Jones, have you ever seen this</p> <p>16 filing before? You may not have.</p> <p>17 A (Witness reviews document.)</p> <p>18 I don't recall having seen this</p> <p>19 document before.</p> <p>20 Q Okay. Well, I would like to talk about</p> <p>21 some much the attachments which I think you</p> <p>22 probably have seen. So I can represent to you</p> <p>23 that this document was filed by defendants in this</p> <p>24 case as a response to the judge -- a judge's</p> <p>25 question about denial notices.</p>
<p style="text-align: right;">Page 195 Page</p> <p>1 I don't think that was the primary reason for the</p> <p>2 statement. I think the primary reason for this</p> <p>3 statement was the complexity of the many different</p> <p>4 situations a borrower could be in.</p> <p>5 Q Okay. And, so, what are some of those</p> <p>6 situations?</p> <p>7 A You know, again, if the borrower -- so</p> <p>8 depending upon how the state standard was decided,</p> <p>9 you know, the -- the borrower could get one</p> <p>10 decision under a state standard but his or her</p> <p>11 friend could get a different decision under a</p> <p>12 different state standard.</p> <p>13 So one of the areas of complexity is</p> <p>14 explaining to the borrower, or at least listing</p> <p>15 for the borrower the state standard under which</p> <p>16 the claim was adjudicated.</p> <p>17 Q So the effort to provide these decision</p> <p>18 letters that provide, quote, an explanation for</p> <p>19 each borrower why their claim was denied, is to</p> <p>20 include the state standard used to adjudicate</p> <p>21 their claim?</p> <p>22 A It should notify that -- the borrower</p> <p>23 of the state standard.</p> <p>24 Q And does it?</p> <p>25 A It is supposed to.</p>	<p style="text-align: right;">Page 197 Page</p> <p>1 And, so, if you go to PDF -- let's</p> <p>2 see --</p> <p>3 A Oh, so, you know, so may -- I do</p> <p>4 remember seeing these exhibits as -- as part of my</p> <p>5 review. So may -- maybe -- maybe this will -- I</p> <p>6 can't remember if we're talking --</p> <p>7 Q We're just going to talk about the</p> <p>8 exhibits anyway.</p> <p>9 A Okay.</p> <p>10 Q So if we go to PDF -- so page 7 -- PDF</p> <p>11 page 7 should be where exhibit A starts?</p> <p>12 A Yes. Okay. I'm at exhibit A.</p> <p>13 Q Okay. So this -- and if it's all right</p> <p>14 with you, I'm going to refer to these as form</p> <p>15 denial A because I -- I think that's what it is.</p> <p>16 A (Witness nods head.)</p> <p>17 Q So -- so can you tell me what exhibit A</p> <p>18 is just so I'm clear that we're on -- that</p> <p>19 we're -- what we're both looking at?</p> <p>20 A Okay. Let me -- let me look at this.</p> <p>21 (Witness reviews document.)</p> <p>22 Q So maybe an efficient way to do this is</p> <p>23 in the court filing on PDF page 3, there is kind</p> <p>24 of a short index identifying what each of these</p> <p>25 denial notices are. And on the bottom of page 2,</p>



<p style="text-align: right;">Page 202 Page</p> <p>1 Q Are you the person who would give final</p> <p>2 sign-off on the use of these templates?</p> <p>3 A No.</p> <p>4 Q Who is that person?</p> <p>5 A Again, I -- I don't -- I don't know who</p> <p>6 actually signs off on these. I mean, there's a</p> <p>7 departmental process, and I -- I can't tell you</p> <p>8 who the final signer is on -- on this document.</p> <p>9 Q Would the secretary review these?</p> <p>10 A I don't -- I don't know. I don't know</p> <p>11 if the secretary would -- would review this</p> <p>12 document. It -- it's possible, but I don't know.</p> <p>13 Q And what was your involvement in</p> <p>14 drafting these?</p> <p>15 A As -- as -- you know, it was an editing</p> <p>16 role. I -- it would have been an editing role in</p> <p>17 response to somebody else's document.</p> <p>18 Q Okay. Now, I want to look at -- well,</p> <p>19 first -- first I'll ask, so C is for</p> <p>20 non-Corinthian borrowers for schools that do not</p> <p>21 have common evidence. And D is for non-Corinthian</p> <p>22 borrowers who went to school that do have common</p> <p>23 evidence.</p> <p>24 What is meant by "common evidence"?</p> <p>25 A You'd have to ask Colleen Nevin, but I</p>	<p style="text-align: right;">Page 204 Page</p> <p>1 A I think it was A. It might have been</p> <p>2 B. But let's go up to A and look.</p> <p>3 (Witness reviews document.)</p> <p>4 So A -- so for the Corinthian</p> <p>5 borrowers, they were all adjudicated under the</p> <p>6 California state law, so that's why this letter</p> <p>7 says California in the template.</p> <p>8 Q Right. On page 2 in the template.</p> <p>9 Okay.</p> <p>10 A But in --</p> <p>11 Q And then --</p> <p>12 A -- in the others, the attorney in the,</p> <p>13 you know, decision/reason or whatever, that's</p> <p>14 where -- that's where they can state which</p> <p>15 standard was used for the adjudication.</p> <p>16 Q Okay. And on the template, where do</p> <p>17 they insert the state law?</p> <p>18 A So in template B, for example, where it</p> <p>19 says, Review recommendation reason, right, the</p> <p>20 reason would be potentially dependent upon the</p> <p>21 state law so -- so that -- that is -- that's</p> <p>22 where -- I think that's the place where the</p> <p>23 attorney would insert it.</p> <p>24 Q Okay. And, so, that review</p> <p>25 recommendation reason, that's also in -- that's</p>
<p style="text-align: right;">Page 203 Page</p> <p>1 think that means -- well, I think you should ask</p> <p>2 Colleen Nevin, but I -- I think it means to</p> <p>3 distinguish between evidence provided by the</p> <p>4 student versus evidence that the department may</p> <p>5 have in its possession, but you'd need to check</p> <p>6 with her for the specific terminology.</p> <p>7 Q Well, let's look at the paragraph</p> <p>8 applicable law, and that is -- on exhibit D, it is</p> <p>9 the first page, middle, and it says, For direct</p> <p>10 loans first disbursed prior to July 1st, 2017, a</p> <p>11 borrower may be eligible for a discharge</p> <p>12 (forgiveness) of part of all of one or more direct</p> <p>13 loans if the borrower's school engaged in acts or</p> <p>14 omissions that would give rise to a cause of</p> <p>15 action against the school under applicable state</p> <p>16 law.</p> <p>17 A Uh-huh.</p> <p>18 Q So is there more information about</p> <p>19 which state law is being applied for these</p> <p>20 adjudications in these letters?</p> <p>21 A Well, you know, if you go up to A</p> <p>22 for -- I -- I can scroll through this one, but if</p> <p>23 you go up through A, there's actually a place</p> <p>24 where it would state the state law standard.</p> <p>25 Q Okay. Let's look at that in A.</p>	<p style="text-align: right;">Page 205 Page</p> <p>1 also under the allegation template in C and D.</p> <p>2 And, so, your understanding is that's</p> <p>3 where an attorney would write what state law they</p> <p>4 were applying?</p> <p>5 A That's my understanding.</p> <p>6 Q Okay. And that's true for -- I'm</p> <p>7 looking at template C, and also let's look at</p> <p>8 template D, allegation type, so that</p> <p>9 recommendation reason portion is where they would</p> <p>10 insert the state law.</p> <p>11 So when you reviewed these letters, is</p> <p>12 that your understanding of what would happen?</p> <p>13 A Yes.</p> <p>14 Q I have a -- I want to go back to the</p> <p>15 common evidence question. If several borrowers</p> <p>16 said the same thing, would that be considered</p> <p>17 common evidence or individual evidence?</p> <p>18 A I don't know. You'd have to ask</p> <p>19 Colleen. I don't know how they review evidence.</p> <p>20 Q And your understanding of the meaning</p> <p>21 of common evidence as being something that the --</p> <p>22 that the department has, if they had in their</p> <p>23 possession, you know, a whole group of borrowers</p> <p>24 making the same allegation, would that -- would</p> <p>25 that be included just in your definition as you</p>



<p style="text-align: right;">Page 210 Page</p> <p>1 just want to make sure I'm not missing it.</p> <p>2 A Yeah, I agree that this denial doesn't</p> <p>3 include one, but I don't know why.</p> <p>4 Q You don't know why.</p> <p>5 Do you have any idea as to why it might</p> <p>6 not include one?</p> <p>7 A You know, again, I could speculate, but</p> <p>8 I didn't review the --</p> <p>9 Q Speculate away.</p> <p>10 A You know, if -- if -- and I don't -- I</p> <p>11 haven't read -- so, I mean, if -- if the student</p> <p>12 actually didn't have a loan.</p> <p>13 Q If he didn't have a loan, would he</p> <p>14 receive that form denial D template, or would</p> <p>15 there be a different kind of notice he would</p> <p>16 receive saying that you don't even have a loan?</p> <p>17 A I can't remember which template would</p> <p>18 be used for I don't have a loan. I'm just giving</p> <p>19 you an example of where there could be a denial</p> <p>20 that doesn't involve the state standard and it</p> <p>21 would be because it doesn't involve -- you know,</p> <p>22 it doesn't meet the federal standard, doesn't have</p> <p>23 a loan or, you know --</p> <p>24 Q So it would be -- is it your view that</p> <p>25 it would be an unusual case for a denial notice</p>	<p style="text-align: right;">Page 212 Page</p> <p>1 standard would be applied. I mean, as the</p> <p>2 template says, the temp- -- and his letter</p> <p>3 actually says, For direct loans first disbursed</p> <p>4 prior to July 1st, 2017, a borrower may be</p> <p>5 eligible for a discharge, et cetera, for a cause</p> <p>6 of action under -- against the school under</p> <p>7 applicable state law.</p> <p>8 So given that statement of applicable</p> <p>9 law, that's saying we're going to apply the state</p> <p>10 law. And, so, when state law is going to be</p> <p>11 applied, your expectation would be that the</p> <p>12 borrower would be told the law of which state is</p> <p>13 being applied?</p> <p>14 MR. MERRITT: Objection: speculative.</p> <p>15 BY MS. O'GRADY:</p> <p>16 Q When a borrower receives a denial</p> <p>17 notice that gives this notice about what law</p> <p>18 applies, is it your expectation that the letter</p> <p>19 would include which law applies?</p> <p>20 MR. MERRITT: Objection: speculative.</p> <p>21 MS. O'GRADY: I'm really just asking</p> <p>22 about what the template -- how the template is</p> <p>23 used and how the witness expects the template to</p> <p>24 be used. I do think it's already on the record so</p> <p>25 I can move on.</p>
<p style="text-align: right;">Page 211 Page</p> <p>1 based on form denial D to not include the state</p> <p>2 standard used?</p> <p>3 A I don't know what's usual or not usual</p> <p>4 because I don't do the adjudication. I --</p> <p>5 Q Right.</p> <p>6 A -- don't --</p> <p>7 Q But when we were talking about the</p> <p>8 template just now, your expectation was that it</p> <p>9 would include the specific state standard when it</p> <p>10 was sent out?</p> <p>11 A If the decision was based on the state</p> <p>12 standard.</p> <p>13 Q Okay. And under what circumstances</p> <p>14 could a decision not be based on a state standard?</p> <p>15 A If it doesn't meet the federal</p> <p>16 standard, the application was incomplete, no</p> <p>17 evidence was submitted, no claim of</p> <p>18 misrepresentation was made, those are some</p> <p>19 examples I can think of. But, again, I don't</p> <p>20 adjudicate claims. I can't imagine all the</p> <p>21 examples because I haven't seen them.</p> <p>22 Q Okay. But a standard application, say,</p> <p>23 that alleges misrepresentation, the person has a</p> <p>24 loan.</p> <p>25 It's your expectation that a state</p>	<p style="text-align: right;">Page 213 Page</p> <p>1 MR. MERRITT: You have her prior</p> <p>2 answers, but --</p> <p>3 MS. O'GRADY: Okay.</p> <p>4 MR. MERRITT: But if you'd like to</p> <p>5 clarify that answer, you can.</p> <p>6 BY MS. O'GRADY:</p> <p>7 Q When you said one of the reasons it</p> <p>8 might not include a state law statement was that</p> <p>9 it didn't meet the federal standard, what did you</p> <p>10 mean by that?</p> <p>11 A To be applicable, it has to meet, you</p> <p>12 know, the federal definition, meaning it has to be</p> <p>13 a direct loan. It has to be a federal loan. It</p> <p>14 has to be, you know, associated within enrollment,</p> <p>15 and --</p> <p>16 Q Okay. So this threshold --</p> <p>17 A Yeah, threshold.</p> <p>18 Q -- determinations, okay.</p> <p>19 A And there has to be evidence against</p> <p>20 which to make the determination. I mean, I think</p> <p>21 that's implicit.</p> <p>22 Q Right.</p> <p>23 A You know, there has to be evidence to</p> <p>24 evaluate.</p> <p>25 Q So we're in agreement that this denial</p>

<p style="text-align: right;">Page 214 Page</p> <p>1 letter that Mr. Deegan received is based on that</p> <p>2 form D template. I think that's --</p> <p>3 A It appears that's --</p> <p>4 Q It appears to be.</p> <p>5 But this one does not include a mention</p> <p>6 of which state law applies?</p> <p>7 A I would agree.</p> <p>8 Q Would it surprise you to know that</p> <p>9 thousands of these denial letters that have been</p> <p>10 sent, none include which state law applies?</p> <p>11 MR. MERRITT: Objection: Speculative.</p> <p>12 MS. O'GRADY: I don't think that's</p> <p>13 speculative, and I would like to know if the</p> <p>14 witness would be surprised to learn that.</p> <p>15 MR. MERRITT: She stated her -- that</p> <p>16 show doesn't have the files before her for each</p> <p>17 and every application.</p> <p>18 MS. O'GRADY: No, but I'm not asking</p> <p>19 her to look at each and every application. I want</p> <p>20 to know if that would be a surprise.</p> <p>21 MR. MERRITT: Go ahead.</p> <p>22 THE WITNESS: It would -- you know, I'd</p> <p>23 have to know more of the specifics.</p> <p>24 BY MS. O'GRADY:</p> <p>25 Q But again, going back to the template</p>	<p style="text-align: right;">Page 216 Page</p> <p>1 Does this also include the common</p> <p>2 evidence that Ed would have for certain schools?</p> <p>3 A You know, again that would be something</p> <p>4 you'd have to ask the BD attorneys. I don't know</p> <p>5 how they look at evidence, so I -- I can't answer</p> <p>6 your question.</p> <p>7 Q Okay. You had said that no state law</p> <p>8 would have to be applied for a borrower who did</p> <p>9 not submit any evidence for their claim. What</p> <p>10 denial letter would they get, what form?</p> <p>11 A You know, I -- I -- I don't know off</p> <p>12 the top of my head. I don't -- I don't know.</p> <p>13 Q Okay. We're going to look at the next</p> <p>14 exhibit which is file name ECF number 129-1,</p> <p>15 Connor Declaration, Plaintiffs' Motion to Enforce.</p> <p>16 (Jones Deposition Exhibit 14 was marked</p> <p>17 for identification and attached to the</p> <p>18 transcript.)</p> <p>19 THE WITNESS: All right. Okay. I have</p> <p>20 it open.</p> <p>21 BY MS. O'GRADY:</p> <p>22 Q Okay. So this is kind of a bulky</p> <p>23 document and I can -- it is a document that was</p> <p>24 submitted to the court that includes an affidavit</p> <p>25 from another one of the named plaintiffs. And</p>
<p style="text-align: right;">Page 215 Page</p> <p>1 of form D, the intention of form D was to tell</p> <p>2 borrowers what state law applied; right?</p> <p>3 A That was the intent.</p> <p>4 Q And when you wrote in your declaration</p> <p>5 that you were developing documents so that, quote,</p> <p>6 borrowers would understand the basis for the</p> <p>7 decision, part of that basis is which state law</p> <p>8 would apply; right?</p> <p>9 A If it -- if the state law is at this --</p> <p>10 is the subject of the review and the decision,</p> <p>11 right. If the state law is the source of the</p> <p>12 determination.</p> <p>13 Q And other sources of determination</p> <p>14 would be you don't have a loan not meeting those</p> <p>15 threshold requirements of even being adjudicated;</p> <p>16 correct?</p> <p>17 A Or you provided no evidence.</p> <p>18 Q Okay. Let's -- on Mr. Deegan's denial,</p> <p>19 let's go to PDF page 10, and it says there, Why</p> <p>20 was my application determined to be ineligible.</p> <p>21 And it says, Ed reviewed your borrower</p> <p>22 defense claims based on any evidence submitted by</p> <p>23 you in support of your application, your loan data</p> <p>24 from National Student Loan Data System and</p> <p>25 evidence provided by other borrowers.</p>	<p style="text-align: right;">Page 217 Page</p> <p>1 like the previous one we just looked at, I'd like</p> <p>2 to look at her denial letter.</p> <p>3 So if you scroll ahead, it's PDF</p> <p>4 page 24 that that document begins.</p> <p>5 A Okay.</p> <p>6 MS. O'GRADY: And, for the record, this</p> <p>7 is Exhibit 15. And the previous Daniel Deegan</p> <p>8 affidavit that we just looked at is Exhibit 14.</p> <p>9 (Jones Deposition Exhibit 15 was marked</p> <p>10 for identification and attached to the</p> <p>11 transcript.)</p> <p>12 BY MS. O'GRADY:</p> <p>13 Q Okay. It's actually page 27 of the PDF</p> <p>14 it begins. I apologize. So like Mr. Deegan's</p> <p>15 that we just looked at, this is Ms. Sweet's</p> <p>16 borrower defense application. And the personal</p> <p>17 information is redacted, but nothing besides that.</p> <p>18 A (Witness reviews document.)</p> <p>19 Q And if you can take a -- take a look at</p> <p>20 the information she provides, she provides</p> <p>21 narrative information about her experience at</p> <p>22 Brooks.</p> <p>23 A And, so, I'm recused from -- from any</p> <p>24 matter -- I have voluntarily recused myself from</p> <p>25 any matter pertaining to a school that was owned</p>

<p style="text-align: right;">Page 218 Page</p> <p>1 or operated by Career Education Corporation, so</p> <p>2 I'm recused from this one.</p> <p>3 Q Okay. So how does that affect your --</p> <p>4 how does that affect your role more generally?</p> <p>5 A I don't review -- I don't review -- I</p> <p>6 don't make determinations, so --</p> <p>7 Q Okay. You had a role in reviewing the</p> <p>8 borrower defense denial templates we just looked</p> <p>9 at, though; correct?</p> <p>10 A Yeah, the generic template.</p> <p>11 Q And some of those do go out to students</p> <p>12 who attended the ECC schools?</p> <p>13 A That's not how the recusal process</p> <p>14 works. The recusal process at the Department of</p> <p>15 Ed is based on particular matters for a particular</p> <p>16 institution.</p> <p>17 Q How long has this voluntary recusal</p> <p>18 been in place?</p> <p>19 A I voluntarily recused myself from the</p> <p>20 particular matters with the particular</p> <p>21 institutions related to CEC from the day I</p> <p>22 returned to the department.</p> <p>23 Q And is there documentation of the</p> <p>24 recusal?</p> <p>25 A Our -- our ethics -- I'm sure our</p>	<p style="text-align: right;">Page 220 Page</p> <p>1 with the name of an institution -- and, in fact,</p> <p>2 that includes -- you know, I have asked Mark to</p> <p>3 mask the names, right, so I don't -- I don't get</p> <p>4 statistics that would delineate the CEC schools or</p> <p>5 outcomes.</p> <p>6 Q So he -- he you ask Mark to mask the</p> <p>7 names when you receive, you know, like a list of</p> <p>8 pending applications so you don't know how many</p> <p>9 are from CEC schools?</p> <p>10 A Correct. He sent -- after he sent the</p> <p>11 first one, I sent an email back saying please</p> <p>12 don't send me a list with the names of schools.</p> <p>13 Q So I want to understand how this works.</p> <p>14 So he'll redact out all the names of all the</p> <p>15 schools, then, or else you'd know that it was CEC;</p> <p>16 right?</p> <p>17 A He's just stopped sending me the list</p> <p>18 with the school names.</p> <p>19 Q So you get a list but no school names,</p> <p>20 or you get no list?</p> <p>21 A I get the roll-up numbers.</p> <p>22 Q Okay. So how else does this voluntary</p> <p>23 recusal affect -- affect your role?</p> <p>24 MR. MERRITT: Objection. She's</p> <p>25 explained the basis of the recusal, and at this</p>
<p style="text-align: right;">Page 219 Page</p> <p>1 ethics officer would have that. I mean --</p> <p>2 Q And how -- so how -- how broad is it?</p> <p>3 I mean, you're recusing yourself from reviewing</p> <p>4 this denial letter for a Brooks student.</p> <p>5 A Right. I would not --</p> <p>6 Q How else would it affect your job?</p> <p>7 A I would not make -- I would not issue a</p> <p>8 decision on any matter regarding an institution</p> <p>9 owned and operated by CEC.</p> <p>10 Q So can you explain further what that --</p> <p>11 what that means operationally for your</p> <p>12 policy-making role or any kind of review that you</p> <p>13 do of -- of policies that might affect CEC?</p> <p>14 A That's not how recusals work. Recusals</p> <p>15 are not -- I mean, you know, I worked at Princeton</p> <p>16 and Community College of Baltimore County. I</p> <p>17 don't -- you know, my recusal doesn't mean that I</p> <p>18 can't look at any matter that might have an impact</p> <p>19 on Ivy League colleges. It's particular.</p> <p>20 So anything -- so in particular, I</p> <p>21 would not look at something about a student who</p> <p>22 attended Brooks Institute. I mean, first of all,</p> <p>23 I wouldn't look at these anyway because I don't</p> <p>24 adjudicate the decisions. I don't review the</p> <p>25 decisions. But as a practice, anything that comes</p>	<p style="text-align: right;">Page 221 Page</p> <p>1 point it's getting beyond the scope of what the</p> <p>2 court ordered.</p> <p>3 BY MS. O'GRADY:</p> <p>4 Q Well, I want to understand if this</p> <p>5 recusal affects in any way your decision to sign</p> <p>6 off on -- or decision to sign off or not sign off</p> <p>7 on decisions.</p> <p>8 We talked a lot about the decision not</p> <p>9 to send denials. I want to understand the full</p> <p>10 scope of it.</p> <p>11 MR. MERRITT: She's answered the</p> <p>12 question.</p> <p>13 BY MS. O'GRADY:</p> <p>14 Q Okay. So nothing else to add?</p> <p>15 A (Witness shakes head.)</p> <p>16 Q Okay. When you were developing your</p> <p>17 partial -- working on developing the partial</p> <p>18 relief methodology that went into effect in</p> <p>19 December 2019, was that -- did you consider CEC</p> <p>20 schools during that, or were you also --</p> <p>21 A There were no -- there were no data on</p> <p>22 CEC schools, no. We looked at the methodology</p> <p>23 based on the data available, which at that point</p> <p>24 in time was Corinthian and ITT.</p> <p>25 Q And no -- and no other schools?</p>

<p style="text-align: right;">Page 230 Page</p> <p>1 document title is Article, Trump administration</p> <p>2 hires McKinsey to evaluate student-loan portfolio.</p> <p>3 And let's mark this as Exhibit 16.</p> <p>4 (Jones Deposition Exhibit 16 was marked</p> <p>5 for identification and attached to the</p> <p>6 transcript.)</p> <p>7 BY MS. O'GRADY:</p> <p>8 Q And have you seen this article?</p> <p>9 A No.</p> <p>10 Q Are you aware of McKinsey's analysis?</p> <p>11 A Yes.</p> <p>12 Q And is that what you're referring to,</p> <p>13 discussion about valuation?</p> <p>14 A You know, I -- I think valuation is</p> <p>15 probably the wrong word. The determination was</p> <p>16 to, you know, correctly identify the level of risk</p> <p>17 in the portfolio, so I think -- I think valuation</p> <p>18 is the wrong term. But the idea is that we need</p> <p>19 to project what the cost of managing the loan</p> <p>20 program and what the cost of the loan program with</p> <p>21 gains are going to be to the taxpayer, and so this</p> <p>22 was a method to determine either the cost or the</p> <p>23 source of revenue that the loan portfolio would be</p> <p>24 to the taxpayer.</p> <p>25 Q And has a conclusion been reached?</p>	<p style="text-align: right;">Page 232 Page</p> <p>1 of the witness to narrow the -- to try to, you</p> <p>2 know --</p> <p>3 MR. MERRITT: I mean, I'm inclined to</p> <p>4 say this is all beyond the scope of the -- what's</p> <p>5 been authorized. I mean, if you think this is</p> <p>6 going to be a short line of questioning --</p> <p>7 MS. O'GRADY: I can -- I can make it</p> <p>8 short. Let me -- I'm going to ask --</p> <p>9 BY MS. O'GRADY:</p> <p>10 Q If I can ask you, Ms. Jones, in your</p> <p>11 policy role at the Department of Ed in evaluating</p> <p>12 or in determining policy regarding borrower</p> <p>13 defense, did you consider the valuation of the</p> <p>14 overall portfolio?</p> <p>15 A No.</p> <p>16 Q And is -- is the likelihood of</p> <p>17 default -- has that been considered when you've</p> <p>18 had a policy role regarding borrower defense?</p> <p>19 A Meaning?</p> <p>20 Q The population of borrowers who filed</p> <p>21 borrower defense claims, their likelihood of</p> <p>22 default, have you evaluated that in your position?</p> <p>23 A No. I mean, I will say none of them</p> <p>24 are at risk of default because when they file a</p> <p>25 claim, they're in forbearance. But, you know,</p>
<p style="text-align: right;">Page 231 Page</p> <p>1 MR. MERRITT: Objection to scope. I'm</p> <p>2 just going to ask what is the relevance to this</p> <p>3 line of questioning?</p> <p>4 MS. O'GRADY: I think discussions about</p> <p>5 the valuation of the loan portfolio go into, you</p> <p>6 know, the reasons for policy handling borrower</p> <p>7 defense claims, whether or not there's a concern</p> <p>8 about the cost of granting those claims and the</p> <p>9 reasons for delaying decisions.</p> <p>10 MR. MERRITT: I don't think that goes</p> <p>11 to the extent to which the difficulty of reviewing</p> <p>12 borrower defense applications actually caused or</p> <p>13 justified the Secretary's 18-month delay.</p> <p>14 MS. O'GRADY: Well, I think it goes to,</p> <p>15 you know, the -- the loan portfolio includes</p> <p>16 claims that are borrower defense claims, so the</p> <p>17 decision on those borrower defense claims affects</p> <p>18 the valuation of the portfolio and vice versa. I</p> <p>19 think those policies are intertwined.</p> <p>20 MR. MERRITT: But that's not a topic</p> <p>21 the court authorized discovery on.</p> <p>22 MS. O'GRADY: The policy of Brown's</p> <p>23 cancellation of student debt and cancellation of</p> <p>24 loans based on borrower defense applications,</p> <p>25 specifically -- I mean, can I ask a few questions</p>	<p style="text-align: right;">Page 233 Page</p> <p>1 there is no analysis because they can't default</p> <p>2 while they're in forbearance.</p> <p>3 Q That's true. I suppose I'm asking,</p> <p>4 though, you know, outside the forbearance granted</p> <p>5 by having filed a borrower defense application, is</p> <p>6 the population of borrowers who file borrower</p> <p>7 defense applications their likelihood of default</p> <p>8 once they are denied and back in repayment, has</p> <p>9 that been a consideration that you've taken into</p> <p>10 account in your role?</p> <p>11 A No.</p> <p>12 MS. O'GRADY: Okay. The next -- the</p> <p>13 next document is in the folder as Article, DeVos</p> <p>14 orders partial loan relief. And this I'm going to</p> <p>15 mark as Exhibit 17 to this deposition.</p> <p>16 (Jones Deposition Exhibit 17 was marked</p> <p>17 for identification and attached to the</p> <p>18 transcript.)</p> <p>19 BY MS. O'GRADY:</p> <p>20 Q This is an article from December 6th,</p> <p>21 2019. And have you seen this article before?</p> <p>22 A Probably.</p> <p>23 Q Okay. Okay. And then in the middle of</p> <p>24 this second page it says, DeVos in recent weeks</p> <p>25 directed the Education Department to carry out a</p>

<p style="text-align: right;">Page 254 Page</p> <p>1 2016 regulations, then they would be -- excuse me, 2 not the 2017 cut-off date, the 2020 cut-off date 3 for the 2019 regulations, they would get put into 4 the examples that you were adding that are fewer 5 than the examples for those under the 2016 6 regulation?</p> <p>7 A Well, no, the list is -- we've expanded 8 the list for the 2019 regulation.</p> <p>9 Q So there are more claims available 10 under the 2019 regulation than under the 2016 11 regulation?</p> <p>12 A There's more information about the 13 claims available.</p> <p>14 Q Okay. So for 2019, there are fewer 15 claims available but more information about them. 16 And for the 2016, there are more claims available 17 but less information about them?</p> <p>18 A I don't know anything about the number 19 of claims. I mean, that's to be determined. But 20 the definition of misrepresentation under the 2019 21 reg does not include breach of contract, and the 22 definition of misrepresentation under the 2016 23 rule does include breach of contract.</p> <p>24 What I'm talking about with regard to 25 the tool is giving more examples to borrowers of</p>	<p style="text-align: right;">Page 256 Page</p> <p>1 applicant under the state law standard. I don't 2 know. I don't know how the smart tool works for 3 them.</p> <p>4 Q So this Web tool, who developed it 5 initially?</p> <p>6 MR. MERRITT: Object on scope. I'm 7 going to ask which topic is this -- all of this 8 relevant to on the Web tool?</p> <p>9 MS. O'GRADY: I would say it's relevant 10 to the reasons for delay because the delay to the 11 extent it's ongoing I think it's appropriate for 12 the reasons for it currently.</p> <p>13 MR. MERRITT: So that's not a topic. 14 The extent to which the difficulty of reviewing 15 borrower defense applications actually caused or 16 justified the 18-month delay that has now ended is 17 what the topic is, so I don't think that's --</p> <p>18 MS. O'GRADY: I think it's relevant to 19 discuss, though, how they're currently being 20 reviewed since this is the -- the evolution of how 21 they were reviewed, the evolution of the denial 22 notices, I would argue it's all part of the same 23 story, or I'm trying to understand if it is, for 24 the reasons behind the developments that occurred 25 after the 18-month delay shed light on the reason</p>
<p style="text-align: right;">Page 255 Page</p> <p>1 the kinds of things that constitute 2 misrepresentation. They would be covered under 3 the 2016 reg, but the department had not provided 4 those examples in -- in the past to borrowers.</p> <p>5 Q Okay. So the smart tool, when you put 6 in your -- your date of loan disbursement -- I 7 mean, people -- most people are still going to be 8 under the 2016 regulations; right?</p> <p>9 A Well, you don't put in your date. You 10 put in your social security number or your FSA ID 11 number and then --</p> <p>12 Q Okay.</p> <p>13 A -- NSLDS, which is our loan system, 14 serves it up.</p> <p>15 Q Thank you. That's helpful.</p> <p>16 So still for most people, it's going to 17 be under the 2016 regulations. Did you add any 18 examples or suggest adding any examples for the 19 2016 regulations?</p> <p>20 A Yes. Because it's a smart form, this 21 list of examples that I listed would show up for 22 both a borrower applying under 2014 and a borrower 23 applying under 2019.</p> <p>24 Q Okay.</p> <p>25 A I don't know what would happen for an</p>	<p style="text-align: right;">Page 257 Page</p> <p>1 for that 18-month delay.</p> <p>2 MR. MERRITT: Well, I guess, like, to 3 the extent the court authorized discovery to the 4 post-18-month delay would be for the development 5 used in the form denial letters which you've 6 discussed. And the extent to which the secretary 7 has denied applications to students, pertaining to 8 school, subject to findings of misconduct, and I'm 9 not seeing how this line of questioning is 10 relevant to any of those topics.</p> <p>11 MS. O'GRADY: I think part of it, 12 though, is about systems generally so some of the 13 delay and some of the reasons given for the delay 14 in the past had been the need to develop systems. 15 My understanding is this computer program is one 16 of those systems.</p> <p>17 So I can ask -- I can ask more 18 questions about the past development of this 19 computer system and -- and when it began. I'm 20 happy to go there. I was going to get there. And 21 I think that falls squarely within the reasons --</p> <p>22 MR. MERRITT: I mean I disagree that 23 the development of systems is something the court 24 authorized discovery into. You know, we've gone 25 into this a little bit. I think at some point</p>

<p style="text-align: right;">Page 278 Page</p> <p>1 Q Okay. So at some point, you signed off</p> <p>2 on this text or something very similar to it?</p> <p>3 A Yeah. I can't remember if it listed</p> <p>4 those three points, but -- but, yeah, I mean,</p> <p>5 there was instructions for reconsideration.</p> <p>6 Q Okay. And when you were reviewing the</p> <p>7 form denial letters, did you think about or</p> <p>8 consider whether or not they would provide enough</p> <p>9 information for a borrower to seek</p> <p>10 reconsideration?</p> <p>11 MR. MERRITT: Objection: calling for</p> <p>12 privileged information.</p> <p>13 MS. O'GRADY: Do you mean deliberative</p> <p>14 process privilege?</p> <p>15 MR. MERRITT: I mean you're asking her</p> <p>16 what she thought, you know, about the review of</p> <p>17 the letters before they were final.</p> <p>18 BY MS. O'GRADY:</p> <p>19 Q On this final letter, do you believe</p> <p>20 there's enough information for a borrower to</p> <p>21 request reconsideration?</p> <p>22 A I believe that there is -- yeah, I</p> <p>23 believe there is enough information about a</p> <p>24 borrower that they can request and how they would</p> <p>25 go about it, like address it in an email or, you</p>	<p style="text-align: right;">Page 280 Page</p> <p>1 Q I'm looking at this particular</p> <p>2 document. So what information in this document</p> <p>3 could a borrower point to to say, Ed, you got it</p> <p>4 wrong, because?</p> <p>5 A I mean, I think they would explain why</p> <p>6 they think we got it wrong.</p> <p>7 Q And what specifically -- how would that</p> <p>8 explanation be different than their initial</p> <p>9 application? You know, what -- what other --</p> <p>10 what -- why do you believe that Ed incorrectly</p> <p>11 decided your borrower defense to repayment</p> <p>12 application?</p> <p>13 A I mean, you know, again, I think a</p> <p>14 borrower would give an explanation, and the -- the</p> <p>15 one that I'm aware of is, you know, borrowers who</p> <p>16 wrote in and said, you know, you assigned relief</p> <p>17 because you said I was in this program but, you</p> <p>18 know, the college called it this other program,</p> <p>19 and -- and -- and that's different on the table.</p> <p>20 Q So the one example you can think of is</p> <p>21 a -- is, again, a problem with the -- again,</p> <p>22 properly identifying what program or what school</p> <p>23 somebody went to.</p> <p>24 If a borrower has included information</p> <p>25 about a number of allegations and then this denial</p>
<p style="text-align: right;">Page 279 Page</p> <p>1 know --</p> <p>2 Q Yes. In terms of logistics, the email</p> <p>3 address is there and the fact of the</p> <p>4 reconsideration process has been described?</p> <p>5 A Yes.</p> <p>6 Q In terms of the substance in point two,</p> <p>7 Why you believe that Ed incorrectly decided your</p> <p>8 borrower defense to repayment application, what</p> <p>9 information in this denial letter could a borrower</p> <p>10 use to answer that question?</p> <p>11 A And that's the part of this that I -- I</p> <p>12 don't have the expertise. I -- you know, those</p> <p>13 particular questions were developed by the BD</p> <p>14 unit.</p> <p>15 Q Let me ask it a different way. So if</p> <p>16 you could put yourself in the shoes of the</p> <p>17 borrower because the borrower is -- I can tell you</p> <p>18 this borrower and probably most borrowers are not</p> <p>19 themselves lawyers either. How do they determine</p> <p>20 what information to include to answer the</p> <p>21 question, Why you believe that Ed incorrectly</p> <p>22 decided your borrower defense to repayment</p> <p>23 application?</p> <p>24 MR. MERRITT: Objection: speculative.</p> <p>25 BY MS. O'GRADY:</p>	<p style="text-align: right;">Page 281 Page</p> <p>1 letter, for example, if we just scroll up to</p> <p>2 page 10 of the PDF, Allegation one, employment</p> <p>3 prospects: You allege that Keller Graduate School</p> <p>4 of Management engaged in misconduct related to</p> <p>5 employment prospects. This allegation fails for</p> <p>6 the following reasons: Insufficient evidence.</p> <p>7 Your claim for relief on this basis is</p> <p>8 therefore denied.</p> <p>9 What basis -- how would a borrower</p> <p>10 interpret that paragraph? I mean, I think you put</p> <p>11 yourself -- well, that's my question.</p> <p>12 How should a borrower interpret that</p> <p>13 paragraph?</p> <p>14 A Because I don't know what the borrower</p> <p>15 submitted originally, I -- I don't know. I don't</p> <p>16 know what was in the borrower's original</p> <p>17 application.</p> <p>18 Q When you signed off on the initial form</p> <p>19 denial letters, I think at one point you had said</p> <p>20 this is the spot, you know, for the following</p> <p>21 reasons, and that's where you had expected there</p> <p>22 to be information about the state law standard</p> <p>23 applied.</p> <p>24 That's right? You testified about that</p> <p>25 earlier today; correct?</p>



<p style="text-align: right;">Page 282 Page</p> <p>1 A I said that when -- yes, in the section</p> <p>2 where the attorneys explain -- I can't remember</p> <p>3 the words, but, right, that little bracketed place</p> <p>4 that you would be evaluating evidence based on the</p> <p>5 state standard.</p> <p>6 Q And here the only words in that</p> <p>7 bracketed place, which I think was recommendation</p> <p>8 reason, is the -- are the words "insufficient</p> <p>9 evidence."</p> <p>10 Is that -- when you first looked at the</p> <p>11 template, is -- you know what, let me just take a</p> <p>12 moment. Let's look at the template. My question</p> <p>13 is about the template.</p> <p>14 So we're going to go to Exhibit</p> <p>15 Number 13 of this deposition, and the file is ECF</p> <p>16 number 116, Defendants Post-CMC Filing.</p> <p>17 And this, as you'll recall, have the</p> <p>18 attachment of these form letters. Let's go all</p> <p>19 the way down --</p> <p>20 A I'm still looking for it.</p> <p>21 Q Oh, sure. Sorry about that.</p> <p>22 A (Witness reviews document.)</p> <p>23 Okay. I -- I have it. Which form do</p> <p>24 you want me to look at?</p> <p>25 Q Okay. So I want to go all the way to</p>	<p style="text-align: right;">Page 284 Page</p> <p>1 MR. MERRITT: Well, it's still going to</p> <p>2 what her thoughts and impressions were at the time</p> <p>3 which is deliberative information, what you're</p> <p>4 asking her now.</p> <p>5 BY MS. O'GRADY:</p> <p>6 Q Did you discuss -- when these were</p> <p>7 finalized, did you discuss what review</p> <p>8 recommendation reason meant?</p> <p>9 MR. MERRITT: You can answer that.</p> <p>10 THE WITNESS: I -- I -- I don't -- I</p> <p>11 don't know what date they were considered to be</p> <p>12 finalized, but, yes, I was engaged in</p> <p>13 conversations about what I believed that meant.</p> <p>14 BY MS. O'GRADY:</p> <p>15 Q And I'm not asking about the</p> <p>16 deliberation of the different drafts. I'm asking</p> <p>17 what your understanding of this template means</p> <p>18 right here? What is the review recommendation</p> <p>19 reason?</p> <p>20 A I had to defer to the expertise of the</p> <p>21 lawyers. I -- I -- I don't write legal text, so,</p> <p>22 you know, the expectation was that lawyers would</p> <p>23 make a decision and that information would be</p> <p>24 provided.</p> <p>25 Q But in your declaration -- we can go</p>
<p style="text-align: right;">Page 283 Page</p> <p>1 PDF page 23, and this is the form D denial</p> <p>2 template.</p> <p>3 A Okay.</p> <p>4 Q And there in the highlighted -- it's</p> <p>5 the highlighted text is what a reviewing attorney</p> <p>6 would insert; correct?</p> <p>7 A It -- it would -- it would be what they</p> <p>8 would enter into their work papers.</p> <p>9 Q Okay. And we discussed before how your</p> <p>10 expectation was that the highlighted text of</p> <p>11 review recommendation reason would include the</p> <p>12 state law standard.</p> <p>13 And my question now is did you expect</p> <p>14 any other information to be within those brackets</p> <p>15 review recommendation reason?</p> <p>16 What other information did you think</p> <p>17 when you reviewed this template would be included</p> <p>18 there?</p> <p>19 MR. MERRITT: Objection. It's calling</p> <p>20 for privileged and deliberative information.</p> <p>21 MS. O'GRADY: Well, I think the witness</p> <p>22 has already testified about her expectation that</p> <p>23 the state law standard would be included here, and</p> <p>24 I want to know her -- when she signed off on the</p> <p>25 form D template what she was signing off on.</p>	<p style="text-align: right;">Page 285 Page</p> <p>1 back to Exhibit 2 of your declaration which is</p> <p>2 your declaration, I should say. We'll go back</p> <p>3 to -- it's PDF page 10 of Exhibit 2, the bottom of</p> <p>4 paragraph 26. And you write here, The department</p> <p>5 has been working to develop documents to provide a</p> <p>6 more robust explanation for borrowers whose claims</p> <p>7 are denied.</p> <p>8 Is this template the result of that</p> <p>9 effort to develop documents to provide a more</p> <p>10 robust explanation?</p> <p>11 A The development of these templates is</p> <p>12 what I was referring to when I said that the</p> <p>13 department was developing documents.</p> <p>14 Q Did you ever, before today, review a</p> <p>15 form D denial notice as it was provided to a</p> <p>16 borrower?</p> <p>17 A No. The servicers send those.</p> <p>18 Q So you've seen the template, but you</p> <p>19 have never before today seen what it looked like</p> <p>20 to a borrower receiving it?</p> <p>21 A I -- I believe that there was one</p> <p>22 letter that I saw that came in. When I asked Mark</p> <p>23 about it, he told me that the letter that I saw</p> <p>24 was not a typical letter. So I've only seen --</p> <p>25 Q Which letter was that? Do you recall?</p>